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APR 30 2003
Federal Communications Commission
Office of Secretary

April 11, 2003

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BY HAND DELIVERY

Marlene Dortch
Secretary
Federal Communications Commission
c/o Visitronix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

CC Docket 96-45

Re: Valor Telecommunications of Texas, L.P.
Petition for Waiver of Section 54.305

Dear Ms. Dortch:

Please find enclosed for filing the original and 4 copies of Valor Telecommunications of Texas, L.P.'s Petition for Waiver of Section 54.305. Please stamp the Stamp and Return copy and return it in the envelope provided.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,

Gregory J. Vogt

Gregory J. Vogt
Counsel for Valor Telecommunications of Texas, L.P.

GJV/mw

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APR 30 2003

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Valor Telecommunications of Texas, L.P.	)	WCB Docket No. 03-___
	)	
Petition for Waiver of Section 54.305 Of the Commission's Rules	))	CC Docket 96-45

PETITION FOR WAIVER OF SECTION 54.305

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April 11, 2003

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SUMMARY

Valor Telecommunications of Texas, L.P. ("Valor") requests a waiver of Section 54.305 of the Commission's Rules to permit Valor to receive high-cost loop support based on the average cost of its lines effective January 1, 2004. Valor is a mid-size independent incumbent local exchange carrier formed through the year 2000 purchase of approximately 315,000 rural lines from GTE. It is certified as a rural telephone company under the FCC's Rules and receives support under the FCC's modified embedded cost mechanism. Although Valor's universal service support was capped at the time of purchase, Valor's unique circumstances and Commission precedent now justify modification of that cap. Therefore, Valor requests that the cap be removed so that it may receive support based upon its actual Texas loop costs on an equal footing with other rural carriers.

Valor faces unique circumstances justifying the waiver. It inherited a highly depreciated network from GTE that has required, and will continue to require, substantial capital expenditures in order to assure quality basic services to its rural customers. Valor's funding needs have been further exacerbated by the incurrence of extraordinary and substantial capital expenditures in the past two years. In 2001, Valor's average loop cost was $314.89, well above the national benchmark average. Yet, Valor's current universal service support levels of approximately $71,000 per month in Texas are insufficient to meet the costs of providing service because Section 54.305 limits Valor to the amounts of support for which GTE was eligible at the time of transfer in 2000.

Grant of the waiver will serve the public interest for four reasons. First, it provides Valor with sufficient explicit universal service support to maintain quality, affordable local service and modernize its infrastructure in its rural service area. Second, grant of the waiver will benefit all

customers in Valor's service area regardless of carrier, as the additional support will be portable to all competing eligible telecommunications carriers under the Commission's rules. Third, grant of the waiver will also serve the objectives of Section 706 of the Communications Act, by enabling Valor to invest in a network capable of providing advanced services to its rural customers. Fourth, the grant of relief requested here will have only a minimal impact on universal service high cost funds.

The waiver is consistent with prior Commission decisions to remove similar universal service caps on other rural carriers after three years. The FCC has previously recognized that such caps should be removed once they have served their purpose, because they could hinder carriers' incentive and ability to extend and upgrade service to customers in rural areas. Because Valor's purchase price was a market-based price reflecting the amount of support for the exchanges under GTE's ownership, Section 54.305 has served its purpose of ensuring that GTE did not artificially inflate the purchase price in anticipation of Valor's potential receipt of increased support after the sale. Since the purpose of the cap has been served, no reason exists to hinder Valor's ability to continue investment in its network and provide improved services to rural customers.

Because Valor's unique circumstances make the additional funding particularly urgent, Valor respectfully requests that the Commission act upon this petition by September 30, 2003, in order to permit Valor to qualify for the additional funding beginning in January 2004.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Valor Telecommunications of Texas, L.P.	)	WCB Docket No. 03-____
	)	
Petition for Waiver of Section 54.305 Of the Commission's Rules	))	

PETITION FOR WAIVER OF SECTION 54.305

Valor Telecommunications of Texas, L.P. ("Valor"), pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules,[1] hereby requests a waiver of Section 54.305 of the Commission's Rules to permit Valor to receive high-cost loop support effective January 1, 2004, based on the average cost of its lines as filed by the Company with the National Exchange Carrier Association (NECA) in July 2003.[2] Grant of the waiver will serve the public interest by providing Valor with sufficient explicit universal service support to maintain quality, affordable local service in its mostly rural service areas, and needed funds essential to modernizing its infrastructure in Texas. Furthermore, the requested relief is consistent with Commission precedent removing similar universal service funding caps on rural companies such as Valor after a period of three years. Because Valor faces unique circumstances that justify the waiver and make the requested relief particularly urgent, Valor respectfully requests that the Commission act upon this petition by September 30, 2003, in order to permit Valor to qualify for the additional funding beginning in January 2004.

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1 47 C.F.R. § 1.3.

2 47 C.F.R. § 54.305.

I. INTRODUCTION AND BACKGROUND

Valor's parent, Valor Telecommunications Southwest, LLC, is a mid-size incumbent local exchange carrier ("ILEC") formed through the purchase of approximately 550,000 rural lines from GTE Southwest, Inc. (now Verizon) ("GTE") in 2000. Valor Telecommunications Southwest, LLC provides service to rural and small urban communities in Arkansas, Texas, Oklahoma, and New Mexico. The company's interstate access service prices are regulated under the FCC's price cap rules.

In Texas, Valor purchased approximately 315,000 lines in 197 exchanges formerly owned by GTE. These lines were removed from GTE's two Texas study areas and consolidated into a newly-created study area for Valor.[3] Valor is certified as a rural telephone company under the Commission's rules, and its average loop cost ($314.89 in 2001) is comparable to that of other rural carriers and well above the national benchmark average.[4] Valor has made substantial investments in the network acquired from GTE, which has enabled the company to bring and maintain quality voice and data services to its Texas customers at affordable rates. However, additional investment is needed to continue to bring such services to all of its rural customers.

To help fund infrastructure needs and improvements, Valor requests that the Commission waive Section 54.305 to permit the company to receive a level of universal service support that

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[3] *Valor Telecommunications of Texas, LP and GTE Southwest Incorporated (Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules)*, 15 FCC Rcd 15816 (Acc. Pol. Div. 2000) (Order) ("*Valor Study Area Waiver Order*"). Valor's Texas study area includes one exchange that is physically located on the Arkansas side of Texarkana. *Id.*, 15 FCC Rcd at 15819, ¶ 6. In 2002, Valor Telecommunications, LLC acquired Kerrville Communications Corporation, whose wholly-owned subsidiary Kerrville Telephone, LP serves a separate study area in Texas. Kerrville Telephone, LP operates subject to the Commission's rate-of-return rules and is not a subject of this waiver petition. *See Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission's Rules*, 17 FCC Rcd 25544 (Wir. Com. Bur. 2002) (Memorandum Opinion and Order).

[4] *Universal Service Fund Data: NECA Study Results, 2001 Report, available at* <http://www.fcc.gov/web/iatd/neca.html>.

more accurately reflects the present costs of providing service (*i.e.* based on the average cost of its lines). Section 54.305 currently limits Valor's universal service support to the per-line support levels to which its exchanges were entitled under GTE's ownership, when the exchanges were part of larger study areas containing substantial numbers of low-cost, urban lines.[5] Thus, Valor simply seeks to be placed on an equal footing with other rural carriers, which receive support based on the actual cost of their lines. Removal of the cap is necessary because neither "safety valve" nor "safety net" relief is available to address current needs due to circumstances surrounding the first year of operation for Valor's Texas exchanges.[6] As demonstrated below, waiver of Section 54.305 is fully supported by Commission precedent, justified by Valor's unique circumstances, and will serve the public interest.

II. WAIVER OF SECTION 54.305 IS CONSISTENT WITH COMMISSION PRECEDENT LIMITING THE DURATION OF INDIVIDUAL COMPANY CAPS ON HIGH-COST LOOP SUPPORT

After freezing study area boundaries in 1984, the FCC began imposing a cap on the amount of high-cost loop support that could be received for exchanges purchased subject to a study area waiver. The Commission was concerned about the potentially adverse impact on the high-cost loop support mechanism that could occur if a low-cost carrier sold high-cost

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[5] Valor acquired lines from both of GTE's Texas study areas. Support for lines purchased from GTE's Contel Texas study area was capped at approximately $71,000. GTE did not receive USF support in its second study area in 2000. Of Valor's 197 exchanges, 92 were located in this second study area, and thus currently do not receive any support. Of those 92 exchanges, 64 have fewer that 1000 lines.

[6] Valor acquired the Texas exchanges from GTE/Verizon on September 1, 2000. "Safety net" support is not available for acquired exchanges under the Commission's Rules. 47 C.F.R. §36.605. For "safety valve" adjustments, Valor would be required to use 2001, the first calendar year after the transfer of the exchanges, as its "index year." Because Valor incurred extraordinarily high expenses in its first calendar year of operation, *see* Section III.A *infra*, any "safety valve" support using 2001 as the index year will not accurately reflect the level of investment required to modernize and upgrade the network acquired from GTE.

exchanges, because the acquiring carrier could substantially increase its support without a corresponding reduction in the low-cost, selling carrier's support.

Initially, the Commission imposed the caps on a case by case basis. Specifically, the agency granted study area waivers subject to the condition that, absent explicit approval from the Common Carrier Bureau, the annual high-cost loop support provided to the acquiring carrier's study area could not exceed the amounts specified in the carrier's study area waiver petition. These caps addressed the agency's concern that carriers could otherwise initially underestimate the potential effect on the high-cost loop support mechanism in order to increase the chances for a waiver, then revise the cost figures upward once the waiver was granted and thereby substantially increase the high-cost loop support received.[7]

When the FCC began the transition to providing universal service support based on a forward-looking economic cost methodology in 1997, the agency became concerned that "potential universal service support payments may influence unduly a carrier's decision to purchase exchanges."[8] The agency sought to ensure that a selling carrier would not "artificially inflate" the price of an exchange in anticipation of the buyer's receipt of increased universal service support as a result of the transfer.[9] In order to discourage carriers from placing such

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7 *See Petitions for Waiver and Reconsideration Concerning Section 36.611, 36.612, 61.41(c)(2), 69.605(c), 69.3(e)(11) and the Definition of "Study Area" Contained in Part 36 Appendix-Glossary of the Commission's Rules Filed by Copper Valley Telephone, Inc., et al.*, 1999 FCC LEXIS 4381, DA 99-1845, ¶ 4 (Com. Car. Bur. 1999) (Memorandum Opinion and Order on Reconsideration) ("*1999 Cap Removal Order*").

8 *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8942 (1997) (Report and Order); *as corrected by Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 (1997), *affirmed in part, reversed in part and remanded in part sub nom., Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

9 *Id.* at 8942-43.

"unreasonable"[10] reliance upon potential universal service support in making a purchase decision, the Commission adopted Section 54.305, which states:

> A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.[11]

The Commission has recognized, however, that capping high-cost loop support for a *limited* time is sufficient to accomplish the goals of Section 54.305. In 1999 and 2000, the FCC removed all individual company caps on high-cost loop support imposed as a part of study area waivers prior to the enactment of section 54.305, and based high-cost loop support for those companies on the actual, average cost of lines on a going-forward basis.[12] The Commission recognized that three years was sufficient for the caps to serve their purpose of preventing carriers from underestimating the effect of the transfer of exchanges on the high-cost loop support mechanism immediately following the transfer.[13] The FCC also recognized that caps of unlimited duration could hinder the carriers' "incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."[14] The Commission noted that the companies' cost estimates for upgrading the acquired exchanges, although reasonable at the time of purchase, might no longer accurately reflect such costs three

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10 *Id.* at 8942.

11 47 C.F.R. § 54.305.

12 *1999 Cap Removal Order*; *Accent Communications, Inc. et al, Petitions for Waiver Concerning the Definition of "Study Area" Contained in Part 36 Appendix-Glossary of the Commission's Rules*, 15 FCC Rcd 23491 (Com. Car. Bur. 2000) (Order) ("*2000 Cap Removal Order*").

13 *Id.* 15 FCC Rcd at 23499, ¶ 10.

14 *1999 Cap Removal Order* ¶ 10.

years later.[15] Thus, once the caps had served their purpose, the agency saw no need to further limit the ability of carriers to receive support for rural investments based on the actual, average cost of their lines.[16]

This precedent should be applied to Valor to remove its universal service cap for the same reasons. First, Valor's universal service cap under Section 54.305 has served its purpose of ensuring that the selling carrier (GTE) did not artificially inflate the price of exchanges in anticipation of Valor's receipt of increased universal service support as a result of the transfer. Indeed, Valor's purchase price was a market-based price that, at most, reflected GTE's 1998 levels of universal service support (the most current data available in September 1999 when Valor and GTE executed their Asset Purchase Agreement for Texas), rather than any anticipated increase in such support after the sale. Second, the granting of a waiver now will not undermine the intended purpose of Rule 54.305. The prospect of a potential increase in USF support three years after a transaction is both too speculative and too remote as to have any impact on the future purchase prices of exchanges, particularly considering the unique facts and circumstances of this petition. Finally, imposing the cap on Valor in perpetuity will significantly hinder Valor's "incentive and ability" to "upgrade service to [its] existing customers" by denying it the support

15 *2000 Cap Removal Order*, 15 FCC Rcd at 23499, ¶ 9.

16 The *Cap Removal Orders* – and this Petition – can therefore be distinguished from instances in which a company sought, at the time of sale, a study area waiver and a concurrent waiver of Section 54.305. *See, e.g., Matter of Federal-State Joint Board on Universal Service; Blackduck Telephone Company and Arvig Telephone Company; Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules and Related Waiver of Section 54.305 of the Commission's Rules*, DA 02-3368, 2002 FCC LEXIS 6495 (Dec. 5, 2002) (Order). In such cases, waiver may be denied because concerns regarding the impact of Section 54.305 on rural investment must be balanced against the objective of Section 54.305, which is to prevent inflation of the sale price of exchanges based upon anticipated increases in high-cost loop support. However, where the objective of Section 54.305 has been fully served – as in the *Cap Removal Orders* and in this case – no countervailing reason exists to hinder a carrier's ability to invest in upgrading service to rural customers.

it needs to invest in its high cost rural infrastructure. The FCC has noted that Section 54.305 could deter investment in rural networks because it can prevent the acquiring carrier from "receiving an amount of support related to the costs of providing supported services in the transferred exchange."[17] In removing the caps in 1999 and 2000, the agency recognized that its action would increase the subject carriers' incentive and ability to upgrade their networks.[18] Like many of those companies, Valor's current costs for upgrading its network are much higher than reasonably anticipated at the time of purchase; and like those companies, Valor simply seeks to be put on an equal footing with other rural carriers and to receive support based on the actual cost of its lines. Although "safety valve" support would normally be available in this circumstance, such support, in Valor's case, will not "reasonably approximate[]"[19] the level of investment needed due to its unique circumstances (as further described in Section III.A below). Thus, removing the cap is the only method of enabling Valor to receive an amount of support that more accurately reflects the costs of providing supported services, and to upgrade its network to provide improved services to its rural customers.

III. WAIVER OF SECTION 54.305 WILL SUPPORT VALOR'S IMPLEMENTATION OF NETWORK UPGRADES TO ITS RURAL CUSTOMERS AND IS THEREFORE IN THE PUBLIC INTEREST

Under section 1.3 of the Commission's Rules, any provision of the rules may be waived if "good cause" is shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest if applied to the

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17 *Federal-State Joint Board on Universal Service,* 15 FCC Rcd 24422, 24432 n. 67 (2000) (Thirteenth Report and Order and Further Notice of Proposed Rulemaking).

18 *1999 Cap Removal Order,* ¶ 10.

19 *Federal State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interchange Carriers,* 16 FCC 11244, 11286 (2001) ("*RTF Order*").

petitioner and when the relief requested would not undermine the policy objective of the rule in question.[20] The petitioner must demonstrate that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.[21] As demonstrated below, Valor has met this standard for the relief requested.

A. Valor Faces Unique Circumstances Justifying a Waiver

Valor faces a combination of unique circumstances that make removal of its universal service cap particularly urgent:

- Valor's network is highly depreciated and requires substantial modernization to provide quality voice and advanced services.
- Valor faces higher costs than most price cap LECs because it serves overwhelmingly rural lines.
- Since beginning operations in 2000, Valor has incurred substantial capital expenditures in part due to circumstances beyond its control.
- Valor's current universal service cap does not accurately reflect the average cost of the lines at the time of transfer due to extraordinary cost reductions by GTE in 1999.
- Safety valve support will not accurately reflect the level of investment required to modernize and upgrade the network acquired from GTE.

First, the network Valor acquired from GTE requires substantial modernization to improve the quality of voice service and to become fully capable of providing access to data services, both narrowband and broadband. Like other large incumbent LECs, GTE had historically focused its investment in urban areas. The rural lines sold to Valor reflected GTE's "underinvestment in rural telephone plant before divestitures… driving home the difference in

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20 *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) ("*WAIT Radio*"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir. 1990).

21 *WAIT Radio*, 418 F.2d at 1159.

the plant retained by GTE and the plant that is sold."[22] Although GTE transferred approximately 16% of its Texas lines to Valor, those lines accounted for 22.2% of GTE's total accumulated depreciation in Texas in 1999.[23] Valor acquired lines that were 70% depreciated (using GAAP standards), while GTE retained lines in Texas that were only 48% depreciated.[24] Thus, Valor acquired a network that was significantly underinvested in comparison to the RBOC average (approximately 54% depreciation as a percent of total local telephone plant).[25]

Consequently, Valor undertook a five-year program in 2001 to upgrade and modernize its Texas network. From September 2000 (when it began operations) through year-end 2002, the company has invested $100.2 million to modernize its infrastructure in Texas, resulting in improved service quality and the delivery of new services to its mostly rural customers. These investments include switch upgrades and additions; switch software upgrades; deployment of CLASS services and voice messaging; modernization of outside plant facilities; reinforcement of existing facilities; upgrade, replacement and maintenance of outside plant; replacement of trucks, tools and test sets; deployment of digital loop carrier facilities; upgrade of interoffice facilities; deployment of new fiber facilities; and deployment of dial-up and broadband Internet access to select exchanges.

Completion of Valor's five-year modernization program, however, will require significant additional expenditures in the next two years. Given the current state of the

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22 Legg Mason Research, *Reshaping Rural Telephone Markets: Financial Perspectives on Integrating Acquired Access Lines* at 99 (2001) ("*Legg Mason Study*").

23 *Id.*

24 *Id.*

25 *Id.* at 28-29.

telecommunications industry, timely completion or continuation of this program may be jeopardized if Valor cannot obtain additional support for its high cost rural operations.

Second, Valor faces higher per-line costs than other price cap LECs of comparable size because its service area is overwhelmingly rural. Of Valor's 197 Texas exchanges, 107 have fewer than 1000 access lines, and only 11 exchanges have more than 5,000 access lines. Valor's teledensity is 9.23 lines per square mile – less than half the average teledensity for rural carriers.[26] The Commission has recognized that primarily rural price cap LECs such as Valor experience costs that are "significantly higher" than other price cap LECs of their size, and are unable to spread those costs over a large subscriber base. Because Valor has fewer lines per square mile of service area than non-rural LECs, its lines must run farther, and the cost of exchanges is distributed among fewer users.[27]

Third, due to circumstances beyond its control, Valor has incurred substantial capital expenditures that have limited the resources available for future infrastructure investment. Some of the unexpected expenditures resulted from the GTE transaction. For example, Valor had incomplete cost information at the time of acquisition (*e.g.* maintenance personnel did not come with the study area). Valor also purchased some remote switches whose host switches remained the property of GTE, requiring Valor to incur additional costs to connect these switches to the rest of its network. In addition, Valor incurred substantial extraordinary costs as a result of a severe ice storm in December 2000, and Valor has invested over $1 million in the

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26 Rural Task Force, *White Paper #2: The Rural Difference* at 33 (2000), *available at* <http://www.fcc.gov/web/universal_service/Whitepaper2.pdf>. The rural average teledensity is 19 lines per square mile, whereas the non-rural average is 128 lines per square mile.

27 *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962, 13036 (2000) (Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45).

telecommunications infrastructure of Crawford, TX, an exchange of less than 700 access lines, in order to meet the telecommunications needs of President Bush and the White House Communications Agency at the President's ranch outside of Crawford. As a result, Valor had capital expenditures of $56.6 million in calendar year 2001,[28] an amount roughly 43 percent greater than what it spent in 2002.

Due to these elevated costs, Valor earned only 6.7 percent rate of return in 2000 and 5.7 percent rate of return in 2001, and has required a substantial low-end adjustment in 2001 and 2002. Valor earned a 5.34 percent rate of return in 2002 and thus will again require a low-end adjustment in 2003. The Commission has noted that consecutive years of low-end adjustments are extremely unusual, and that such consistent low earnings, should they persist, could compromise Valor's ability to maintain current levels of service in Texas.[29] Under such conditions, prudence dictates that Valor must obtain additional external sources of funding in order to continue on the course of its current modernization program.

<u>Fourth</u>, GTE incurred an extraordinary cost reduction in the second half of 1999 that depressed the average loop cost used as the basis for Valor's current cap. In 1999, GTE recognized net pension plan gains of $57.2 million (company-wide) stemming from a lump-sum settlement of pension obligations in association with an employee-reduction program.[30] The pension plan gains significantly lowered GTE's operating costs (and thus, average loop cost) in

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28 *Valor Telecommunications of Texas and Valor Telecommunications of New Mexico, Petition for Waiver of the Operation of the X-Factor in the Price Cap Indices Formula Set Forth in Sec. 61.45(b)(1)(i)*, 17 FCC Rcd 10646, 10651 (Wir. Com. Bur. 2002) (Order) ("*Valor X-Factor Order*").

29 *Id.* at 10651.

30 *GTE Southwest, Inc., Form 10-K 405 For Fiscal Year End December 31, 1999* (filed March 30, 2000), *available at* <http://www.sec.gov/Archives/edgar/data/40874/0000950134-00-002771-index.html>.

the second half of the 1999, which in turn resulted in lower support levels for GTE at the time of transfer. Valor did not have notice of the cost reductions at the time of sale, and none of the associated benefits were passed on to Valor (either in the purchase price or by other means). Thus, Valor lost support due to financial gains by GTE from which it reaped no benefit.

Fifth, safety valve support will not accurately reflect the level of investment required to modernize and upgrade the network acquired from GTE. Safety valve support is calculated based on the difference between an "index year" expense adjustment and "subsequent year" expense adjustments. Valor's index year for this calculation would be 2001, the first calendar year after the transfer of the exchanges[31] – a year in which, as explained above, Valor had unusually high (and unanticipated) expenditures. Thus, using 2001 as Valor's index year for safety valve purposes will not "reasonably approximate[] [Valor]'s new investments in the acquired exchanges."[32]

Furthermore, the safety valve mechanism was not yet in place when Valor purchased the Texas exchanges; indeed, it was not adopted until the middle of 2001, Valor's largest investment year.[33] Thus, the rule could not have guided Valor's investment decisions in 2001. Furthermore, even if the rule had been in place, the Commission could not have intended for the rule to encourage Valor to under-invest in its network for an additional year after the transfer, simply so Valor could establish a base year sufficiently low to ensure that the Company would receive the needed level of safety valve support in future years. Valor's 2001 investments in Texas were necessary and appropriate, not only because of the unanticipated investments outside the

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31 *See* 47 C.F.R. § 54.305(e).

32 *RTF Order*, 16 FCC Rcd at 11286.

33 *Id.*, 16 FCC Rcd at 11281-293

Company's control (as discussed above), but also because of the highly depreciated condition of the acquired network, service standards imposed by the Texas Public Utility Commission, and customer expectations of improved service.

B. A Waiver Would Serve the Public Interest

1. A Waiver Will Enable Valor To Continue With The Upgrade Of Its Aging Network

As described above, Valor inherited a highly depreciated network from GTE that was severely declining in value. Despite a multi-year investment program that has already brought quality voice and broadband services to many customers, Valor must continue to make significant upgrades in order to expand these services to all of its rural customers. This expansion will take many more years than planned unless Valor can generate the funds necessary to make the large infrastructure investments that are still needed. Waiver of Section 54.305 will provide much-needed funds to allow Valor to improve the quality of access services for all of its customers and create a network that is capable of accommodating broadband services to consumers in the most rural parts of its service territory. Such action is consistent with the Commission's goal of ensuring that consumers in rural and high cost areas have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.[34]

2. A Waiver Will Fund Improved Service To All Customers In Valor's Service Area, Regardless Of Carrier

Under the Commission's rules, grant of the waiver will provide additional high-cost loop support that will be portable to any eligible telecommunications carrier within Valor's territory.[35]

[34] *RTF Order*, 16 FCC Rcd at 11246.

[35] 47 C.F.R. § 54.307.

Thus, the waiver will support network upgrades and improved service to all customers within Valor's rural service area, whether served by Valor or any other carrier.

3. A Waiver Will Further The Commission's Section 706 Objectives

Grant of the waiver will also further the FCC's statutory mandate under Section 706 of the Communications Act to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[36] The widespread deployment of advanced services has become a "central communications policy goal" for the Commission.[37] In particular, the agency has stressed the importance of ensuring that rural Americans receive timely access to advanced services, noting the "great disparity in high-speed subscribership at different population densities."[38] The Commission has further noted that high-speed Internet access is critical for rural development.[39] While the high-cost loop support mechanism does not support the provision of advanced services directly, replacement, upgrade and repair of Valor's existing network facilities are a necessary first step to the cost-effective deployment of broadband services. The FCC has recognized that modem network infrastructure can provide access not only to voice services, but also to data, graphics, video, and other services. Therefore, the Commission's policies do not impede the deployment of modern plant capable of providing access to advanced services, and the use of universal service support to invest in infrastructure

36 47 U.S.C. § 706.

37 *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 17 FCC Rcd 2844, 2845 (2002) (Third Report) ("*Third 706 Report*").

38 *Id.* at 2861.

39 *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, 15 FCC Rcd 20913, 20994-995 (2000) (Second Report) ("*Second 706 Report*") (quoting with approval the conclusion of a Federal Reserve Study).

capable of providing access to advanced services does not violate section 254(e) of the Communications Act. Indeed, the Commission has recognized that its support mechanism for rural carriers "inherently provides incentives for the infrastructure investments necessary for providing for providing access to advanced services."[40]

Valor has deployed DSL service in select Texas markets, and has committed to working with community leaders to bring DSL service to any market with 75 bona fide service requests and at least one ISP. However, many Valor customers, especially those living in areas with comparatively lower population densities, still do not have access to advanced services and will not have access without network improvements that are a prerequisite for providing broadband capability. Absent regulatory support, Valor can only make these investments if the demand for such services in a market is large enough to permit the company to recover these fixed costs within a reasonable amount of time. Grant of the waiver will therefore speed the deployment of advanced services to Valor's rural customers consistent with the Commission's Section 706 goals, because the infrastructure improvements enabled by the waiver will also result in a network that is of a quality sufficient to provide access to advanced services.

4. A Waiver Will Not Adversely Impact The Universal Service Fund

Waiver of Section 54.305 in this instance will have minimal effect on the high-cost universal service mechanisms. Valor estimates that it will receive approximately $850,000 in monthly support as a result of this waiver. That figure will result in an annual aggregate shift that is less than one percent of the high-cost loop support fund, which is projected to total $1,120

[40] *RTF Order*, 16 FCC Rcd at 11322 (internal citations omitted).

million for calendar year 2003.[41] Prior to the enactment of section 54.305, the Commission used a "one-percent" guideline to determine whether a transfer of exchanges would have an adverse impact on the universal service support mechanisms.[42] Therefore, grant of the waiver would not constitute a significant impact on the universal service fund or result in unwarranted growth of the universal service fund.

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[41] *See Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2003* (filed by USAC Nov. 1, 2002) at 10-12, *available at* <http: www.universalservice.org/overview/filings/2003q1/1Q2003%20FCC%20110102.doc>.

[42] Prior to the adoption of section 54.305, the Commission concluded that a transfer of exchanges would be deemed to have an adverse effect on universal service support mechanisms if it resulted in an annual aggregate shift in high-cost support in an amount equal to or greater than one percent of the total high-cost loop fund, unless the petitioner demonstrated an extraordinary public interest benefit. *See, e.g., U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules,* 10 FCC Rcd 1771, 1772 (1995) (Memorandum Opinion and Order). Because under section 54.305 carriers purchasing high-cost exchanges can only receive the same level of per-line support as the selling carrier was receiving for those exchanges prior to the sale, there can, by definition, be no adverse impact on the universal service fund resulting from the transaction.

IV. CONCLUSION

For the foregoing reasons, Valor respectfully requests that the Commission waive Section 54.305 and allow Valor to calculate its universal service support effective January 1, 2004 based on the average cost of its lines. The requested waiver will serve the public interest by allowing Valor to upgrade its infrastructure to a modern network capable of providing quality voice and advanced services to its rural customers.

Respectfully submitted,

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April 11, 2003

CERTIFICATE OF SERVICE

I, Chin Yoo, hereby certify that on April 11, 2003, I caused a copy of the foregoing Petition for Waiver of Section 54.305 to be served via hand delivery to the following:

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